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10/527,106

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Stephen George Appleton

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08/05/2008

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EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/05/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/527,106 | <b>Applicant(s)</b><br>APPLETON ET AL. |  |
|                              | <b>Examiner</b><br>ERIK KASHNIKOW    | <b>Art Unit</b><br>1794                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

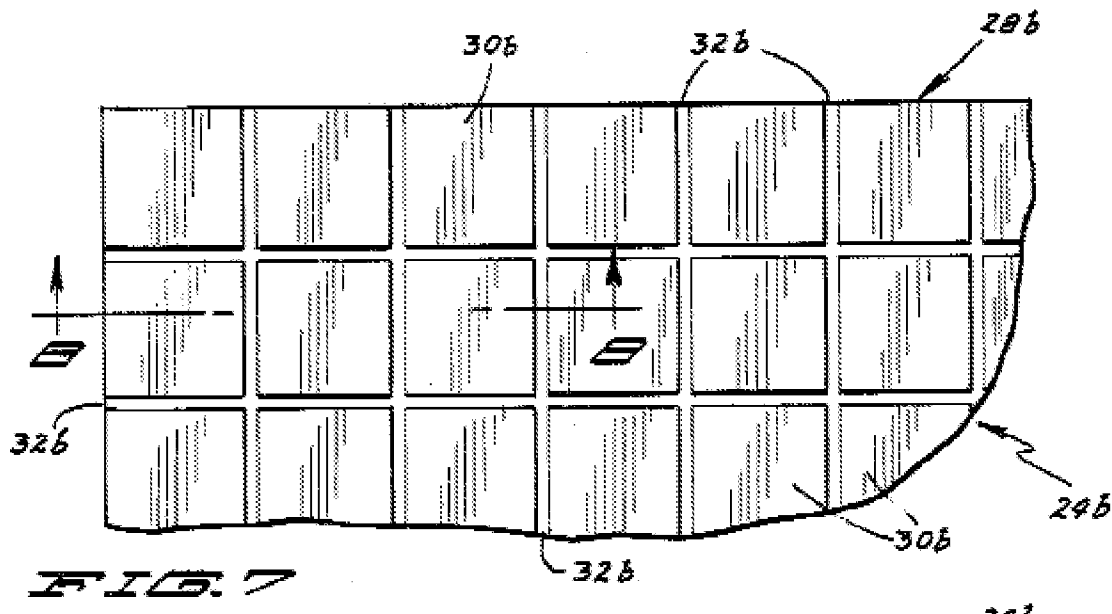
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|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradstad et al. (US 4,230,924) in view of Walters (US 5,256,846).
2. In regards to claim 1 Bradstad et al. teach a food package for use within a microwave oven (column 1 lines 14-15), wherein the phrase “for use within a microwave oven” is being considered as a statement of intended use. MPEP 2111.02.
3. In regards to claims 1, 3 and 9 Bradstad et al. teach that the packaging material be composed of a sheet of plastic, paper, or paper board which has a metallic coating thereon. The metallic coating is subdivided into islands or pads with non metallic strips between (column 2 lines 54-58). Bradstad et al. further teach that the metallic pads or islands which have a range of from 0.03125 inches to 0.75 inches which is equivalent to 793.75 to 19050 $\mu$ m with the strips in between being 0.0001 to 0.0625 inches wide, which is equivalent to 2.54 to 1587.5 $\mu$ m (claim 9). The invention of Bradstad et al. is

shown in figure 7.



4. In regards to claim 2 and 13 Bradstad et al. teach that their invention is designed to be used in microwave ovens with microwave frequencies on the order of 2450 MHz (column 3 line 41). They also state that the energy is absorbed by the food product that is to be heated (column 3 lines 45-46). Therefore it would be inherent that the material is substantially transparent to radiation at that frequency.
5. In regards to claim 6 Bradstad et al. teach that polyester be used as the plastic film (column 6 line 29).
6. In regards to claim 7 Bradstad et al teach that the metallic islands or pads can be formed from such metals as aluminum and gold (column 4 lines 2-6).
7. In regards to claim 8 Bradstad et al. teach that the shapes of the islands or pads can be squares (figure 7) or rectangles (column 6 line 9).
8. In regards to claim 10 and 11 Bradstad et al. also teach that their invention can be used to form a package (column 1 lines 59-65 and claim 1).

9. As stated above Bradstad et al. teach a package and packaging material for use in microwave ovens. However Bradstad et al. are silent regarding certain methods of making the package, as well as the dimensions of the metal patches.

10. Walters teaches a microwave barrier film for use in packaging of microwaveable food products (column 1 lines 5-11).

In regards to claim 1 Walters teaches that "it is well within the ordinary skill of those in the art to select the particular material of the reflective coating regions as well as the physical dimensions of the regions such as coating patterns, thickness, width and pitch and control both the degree of impermeability, the degree to which the reflective coating regions will reflect microwave energy and the amount of distribution of microwave energy that is transmitted through the polymeric substrate in the gaps and regions of the reflective material" (column 6 line 64 through column 7 line 5). Examiner points out that absent a showing of criticality with respect to "the dimensions of the metal patches" (a result effective variable), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "dimension of the patch" through routine experimentation to values, including those presently claimed in order to achieve "a microwaveable cover sheet which has the degree of permeability desired, the amount of distribution of the microwave energy and the desired reflection of the microwave energy". It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

11. In regards to claim 14 Walters et al teach that chemical vapor deposition processes can be used to make the claimed invention (Column 4 line 55-68, and column 5 line 59 to column 6 line 3).

12. In regards to claim 12 it is examiners opinion that it would be a design choice to create a bandage from the above material. One would only need to put the claimed material into proper dimensions to be used as a bandage. It is well within the skill of one of ordinary skill in the art at the time of the invention to change the dimensions of the claimed invention. It is also obvious that one of ordinary skill in the art could use the material to wrap a body part in much the same way one would use to wrap a foodstuff.

13. It would be obvious to one of ordinary skill in the art at the time of the invention to combine the invention of Bradstad et al. with the invention of Walters because the invention of Walters offers a lower susceptibility to arcing as well as improved impermeability to ultraviolet radiation, water vapor, and gaseous oxygen (column 1 line 62-65). Further, given that it would have been obvious for one of ordinary skill in the art to arrive at the presently claimed patch dimension and given that Bradstad et al. disclose packaging material made of the same material and shape as claimed, it is clear that the packaging material would intrinsically reflect thermal infrared radiation and intrinsically possess emissivity as presently claimed.

14. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradstad et al. (US 4,230,924) in view of Walters (US 5,256,846) in further view of Yializis (US 6,106,627)

15. Bradstad et al. and Walters teach packages for use in packaging foodstuff that will be cooked in a microwave oven. However both Bradstad et al. and Walters are silent regarding the vacuum deposition method of making the product, which uses a mask.

16. Yializis teaches metal coated vacuum-deposited thin film polymers useful in food packaging applications (column 1 lines 5–13).

17. Yializis teaches that the patterns of metal on polymer films can be formed by depositing the metal through a masking device, which corresponds to the desired pattern (column 2 lines 19-36).

18. It would be obvious to use the method disclosed by Yializis to make the invention of Bradstad et al. because it provides a barrier to air and water vapor as well as allowing an individual to visually inspect the food (Yializis column 2 lines 1-7).

19. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bradstad et al. (US 4,230,924) in view of Walters (US 5,256,846) in further view of Aindow et al. (6,171,429).

20. Bradstad et al. and Walters teach packages for use in packaging foodstuff that will be cooked in a microwave oven. However both Bradstad et al. and Walters are silent regarding the heated stamp method of making the product.

21. Aindow et al. teach a method of printing a pattern of hot foil onto a substrate (column 1 line 65 to column 2 line 7). They teach that foil carrying a side with an adhesive is activated by heat is moved towards a printing position where a pattern is

transferred from of foil to the stock material (claim 2). A heated stamp is taught in column 3 lines 1-11). Aindow et al. also teach that the substrate to which the foil pattern is attached can be a polyester (column 2 lines 49-55). Aindow et al. further teach removing the excess foil (column 4 lines 17-31).

22. It would be obvious to use the method of Aindow et al. on the inventions of Bradstad et al. and Walters because the application of heat applied from the press helps to overcome the inability to transfer heat sufficiently (column 1 17-19).

### ***Response to Arguments***

23. Applicant's arguments see response to arguments, filed 04/07/2008, with respect to the drawings have been fully considered and are persuasive. The objection of the drawings has been withdrawn.

24. Applicant's arguments see arguments, filed 04/07/2008, with respect to the rejection(s) of claim(s) 1-11 and 13 under Bradstad have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bradstad in view of Walters.

25. Examiner notes that while Yizalis and Aindow do not disclose all the features of the present claimed invention, Yizalis and Aindow are used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this



reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow  
Examiner  
Art Unit 1794

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1794